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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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X ONE, INC.,

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Plaintiff,

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v.

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UBER TECHNOLOGIES, INC.,

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Defendant.

Case No. 16-cv-06050-LHK (SVK)

**ORDER GRANTING IN PART AND
DENYING IN PART X ONE'S MAY 17,
2019 MOTION TO COMPEL UBER
DEPOSITIONS**

Re: Dkt. No. 145

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I. INTRODUCTION

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In this action, Plaintiff X One, Inc. ("X One") asserts that Defendant Uber Technologies, Inc. ("Uber") infringes U.S. Patent No. 8,798,593 ("the '593 Patent") and U.S. Patent No. 8,798,647 ("the '647 Patent"). In particular, X One alleges that Uber's app and Uber's ride-sharing, car-pooling and delivery services infringe the '593 and '647 Patents. *See* ECF 1.

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Before the Court is one of five joint discovery letters filed by the Parties in recent weeks. ECF 133; ECF 135; ECF 139; ECF 144; ECF 145. This order addresses ECF 145 in which X One moves to compel Uber to (1) identify witnesses for X One's Federal Rule of Civil Procedure 30(b)(6) Topics 3, 4, 10, 22, 29, 35, 38 and 39; (2) produce additional witnesses for deposition beyond the ten allotted for under Federal Rule of Civil Procedure 30(a)(2); and (3) accept the dates offered for the depositions of Jose Picazo and Richard Haney. *Id.* at 2.

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Pursuant to Civil Local Rule 7-1(b), the Court finds this matter suitable for disposition without oral argument. As set forth below, the Court **GRANTS IN PART** and **DENIES IN PART** X One's motion to compel.

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1 **II. DISCUSSION**

2 **A. X One's Rule 30(b)(6) Topics**

3 X One moves to compel Uber to identify witnesses for its Rule 30(b)(6) Topics 3, 4, 10,
4 22, 29, 35, 38 and 39. ECF 145 at 2. Although Uber has yet to do so, it represents that it will
5 provide witnesses on all topics except for Topics 3, 4 and 22. *Id.* at 4. **These witnesses are to be**
6 **identified no later than 5:00 p.m. on Thursday, May 23, 2019.** This leaves Topics 3, 4 and 22
7 for the Court's resolution.

8 **1. Topic 3**

9 The Court finds that Topic 3, which focuses on Uber's compliance with and execution of
10 its document retention policy, is proper. Thus, the Court **ORDERS** Uber to identify and produce
11 a witness on Topic 3.

12 **2. Topic 4**

13 Topic 4 focuses on highly specific details of document searches. The topic, as drafted and
14 on the facts presented, is not in proportion to the needs of the case and is highly likely to quickly
15 and unnecessarily raise issues of attorney client privilege and attorney work product. The Court
16 has allowed requests of this detailed nature only upon a showing that document productions to
17 date have been inadequate. X One fails to make such a showing here, and as a result, the Court
18 **DENIES** X One's motion to compel Uber to identify a witness on Topic 4.

19 **3. Topic 22**

20 Topic 22 asks Uber to identify a Rule 30(b)(6) witness on the facts and documents relating
21 to Uber's contentions on non-infringement, invalidity and unenforceability. *Id.* at 2. While
22 interrogatories and requests for production directed at underlying facts in support of non-
23 infringement and invalidity contentions, as well as claims of unenforceability, are generally
24 appropriate, a deposition notice directed at these subjects, in a case of this nature, quickly invades
25 the area of expert testimony. If X One had demonstrated a reasonable basis to believe that Uber
26 would have an understanding of this information, separate and apart from the work of its experts
27 in this litigation, that would have given the Court additional facts to consider. However, no such
28 showing was made here, and therefore, the Court **DENIES** X One's motion to compel Uber to

1 identify a witness on Topic 22.

2 Accordingly, as set forth above, X One’s motion to compel is **GRANTED IN PART** and
3 **DENIED IN PART**. Further, **BOTH PARTIES ARE ORDERED** to identify witnesses for all
4 outstanding Rule 30(b)(6) topics by **5:00 p.m. on Thursday, May 23, 2019**.

5 **B. X One’s Motion to Compel Additional Depositions**

6 X One seeks permission to exceed Rule 30(a)(2)’s presumptive limit of ten depositions per
7 a side. ECF 145 at 2–3. X One alleges that after it had already noticed ten deposition witnesses,
8 Uber amended its initial disclosures to identify fourteen new potential witnesses who have
9 information relevant to this case. *Id.* at 2. Although its request is not entirely clear, it appears that
10 X One seeks to depose five of those witnesses outright and to take personal depositions of each
11 Rule 30(b)(6) designee, such that it is requesting permission to conduct “between 17 and 19”
12 depositions. *Id.* at 3.

13 Uber in turn objects to any depositions beyond the ten depositions allowed by
14 Rule 30(a)(2) and argues that X One has failed to demonstrate a need for additional depositions.
15 *Id.* at 4. Uber is willing to offer any of the witnesses it has disclosed for deposition, so long as
16 X One stays within Rule 30(a)(2)’s presumptive ten-witness limit. *Id.* at 5. Lastly, Uber offers to
17 extend the time for depositions to June 14, an additional week after the Parties previously agreed
18 to conduct depositions. *Id.*

19 A party seeking to exceed Rule 30(a)(2)’s presumptive ten-witness “limit bears the burden
20 of making a ‘particularized showing’ of the need for additional depositions.” *Thykkuttathil v.*
21 *Keese*, 294 F.R.D. 597, 600 (W.D. Wash. 2013) (citations omitted); *Nat. Res. Def. Council, Inc. v.*
22 *Winter*, No. CV057513FMCFMOX, 2008 WL 11338647, at *2 (C.D. Cal. July 11, 2008). The
23 requesting party must also “exhaust less expensive and burdensome means of discovery before
24 resorting to a request for relief.” *Nat. Res. Def. Council*, 2008 WL 11338647, at *2.

25 Uber’s May 7, 2019 amended initial disclosures identified fourteen “new” witnesses, but
26 only three of those are witnesses that X One had not previously seen. The other witnesses had
27 previously been identified in interrogatory responses or as Rule 30(b)(6) designees. ECF 145 at
28 2–3 and n.1. Although Uber’s disclosure was relatively late in time, in the Parties’ subsequent

1 meet and confer efforts, Uber confirmed that four individuals previously noticed by X One for
2 deposition were not going to testify at trial. *Id.* at 3 n.2. One of these depositions was essentially
3 already under way, so X One stated that it planned to proceed with that deposition. *Id.* That still
4 leaves X One three depositions to take while staying within the limits of Rule 30(a)(2). Thus, X
5 One has room to take the depositions of the “new” witnesses, if it so chooses. The three “new”
6 witnesses, Andrew Macdonald, Minh Duong and Danny Guo, are to be made available by close of
7 fact discovery or on a date agreed to by the Parties. The Parties should note that nothing in this
8 order sanctions the extension of Court-ordered deadlines.

9 X One also requests permission to take individual depositions of all Uber’s Rule 30(b)(6)
10 designees. This request would require X One to exceed Rule 30(a)(2)’s ten-deposition limit.
11 X One fails to articulate why the additional depositions it seeks are necessary or what non-
12 duplicative discovery it seeks from deposing these witnesses in their individual capacities.
13 Accordingly, X One has made no showing for relief from the presumptive limit, and therefore, the
14 Court **DENIES** X One’s request for permission to exceed Rule 30(a)(2)’s ten-deposition limit.

15 **C. Deposition Dates for Jose Picazo and Richard Haney**

16 X One asks that the depositions of Jose Picazo and Richard Haney proceed on Saturday,
17 May 25, and Sunday, May 26. ECF 145 at 4. Uber requests that the Court order X One produce
18 both witnesses on business days during the last week of May, noting that no depositions are
19 currently scheduled for Tuesday, May 28, or Thursday, May 30. *Id.* at 6. Here, fact discovery
20 closes on May 31, 2019. ECF 96. A deposition time crunch, including the triple-setting of
21 depositions and depositions on weekends, while not ideal is difficult to avoid in a case of this
22 scope. Accordingly, the depositions of Jose Picazo and Richard Haney shall proceed on Saturday,
23 May 25, 2019, and Sunday, May 26, 2019.

24 **III. CONCLUSION**

25 For the foregoing reasons, X One’s motion to compel is **GRANTED IN PART** and
26 **DENIED IN PART**. The Court **ORDERS** as follows:

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- 28 • Uber is to identify and produce witnesses for Topics 3, 10, 29, 35, 38 and 39.
- Both Parties are to identify witnesses for all outstanding Rule 30(b)(6) topics by

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5:00 p.m. on Thursday, May 23, 2019.

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- The Court denies X One's request for permission to exceed Rule 30(a)(2)'s ten-deposition limit.
- The depositions of Jose Picazo and Richard Haney shall proceed on Saturday, May 25, 2019, and Sunday, May 26, 2019.

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Dated: May 22, 2019

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SUSAN VAN KEULEN
United States Magistrate Judge